

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA,)	
)	Case No. 3:20-cv-535-DPJ-FKB
Plaintiff,)	
)	
v.)	
)	
ROGER L. SMITH and TEMPLE THEATER)	
FOR THE PERFORMING ARTS,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff, United States of America, for its Complaint against the Defendants, Roger L. Smith and the Temple Theater for the Performing Arts, states and alleges as follows:

1. The United States seeks a judgment against Roger L. Smith for his unpaid federal income tax liabilities for the 2007, 2010, and 2018 tax years. The United States seeks a declaration that the Temple Theater for the Performing Arts holds property as Roger L. Smith's nominee, that the Temple Theater for the Performing Arts is Roger L. Smith's nominee, and that federal tax liens are valid and enforceable against Roger L. Smith's property, including the real property described in this Complaint.

2. These claims are asserted at the request and with the authorization of the Chief Counsel for the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and at the direction of the Attorney General of the United States pursuant to 26 U.S.C. § 7401.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action under 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1396 because the Defendant taxpayer resides within this district and the real property at issue is located in Lauderdale County, which lies within this district.

SUBJECT PROPERTY

5. The United States seeks a declaratory judgment that federal tax liens against Roger L. Smith and his nominees are valid and enforceable against real property located at 2320 8th Street, Meridian, MS 39301 (the “Subject Property”). The legal description of the Subject Property is as follows:

Lots 11, 12, 13, 14, 15 and 16 in Block 66 of Ragsdale’s Survey of the City Meridian, Lauderdale County, State of Mississippi;

AND ALSO:

Commencing at the Northeast corner of Lot 9 of Block 66 of Ragsdale’s Survey of the City of Meridian, Mississippi and run thence West 44.0 feet along the north line of said Block 66 to the point of beginning; run thence West 81.0 feet along the north line of said Block 66 to the Northwest corner of said Block; run thence South 62.5 feet along the west line of said Block 66; run thence East 80.4 feet along the south line of Lot 10 of said Block 66; run thence North 62.5 feet to the point of the beginning, being all in and a part of Lots 9 and 10 said Block 66 of said Ragsdale’s Survey; together with all and singular the improvements thereon and appurtenances thereunto belonging.

DEFENDANTS

6. Roger L. Smith (“Smith”) is named as a defendant in this action because he is the taxpayer and has failed to pay his federal income taxes for the 2007, 2010, and 2018 tax years. He resides within the jurisdiction of this Court.

7. The Temple Theater for the Performing Arts, a non-profit organization incorporated in Mississippi, holds bare legal title to the Subject Property as the nominee of Roger L. Smith and is named as a defendant in this action under 26 U.S.C. § 7403(b) as a party that may claim an interest in the Subject Property.

8. Roger L. Smith is the registered agent and manager of the Temple Theater for the Performing Arts.

COUNT I-REDUCE FEDERAL INCOME TAX LIABILITY TO JUDGMENT
(Against Defendant Roger L. Smith only)

9. The United States incorporates by reference the allegations contained in paragraphs 1 through 4 and 6 as if fully and separately restated herein.

10. Smith failed to timely file his federal income tax returns for the 2007, 2010, and 2018 tax years. He has also failed to pay the tax liabilities for the 2007, 2010, and 2018 tax years.

11. A delegate of the Secretary of the Treasury timely made assessments against Smith for unpaid federal income taxes (Form 1040), penalties, and interest for the 2007, 2010, and 2018 tax years, as further detailed in the table below:

<u>Tax Year</u>	<u>Date Assessed</u>	<u>Amount of Assessments (\$)*</u>
2007	07/19/2010	\$129,208.00(T)
		\$851.16(P2)
		\$29,071.80(P3)
		\$18,089.12(P4)
		\$17,432.92(I)
	11/26/2012	\$14,212.88(P4)
	12/2/2013	\$23,230.85(I)
	12/1/2014	\$7,049.72(I)
	12/7/2015	\$7,405.64(I)

	12/5/2016	\$9,203.52(I)
	12/4/2017	\$10,407.47(I)
	12/3/2018	\$12,713.95(I)
2010	6/17/2013	\$8,450.00(T)
		\$1,901.25(P3)
		\$1,140.75(P4)
		\$708.42(I)
2018	9/9/2019	\$291.00(T)
		\$210.00(P3)
		\$11.26(I)
	11/11/2019	\$3.62(I)
		\$2.65(P4)

*T - Tax

I - Interest

P2 - Failure to pre-pay TAX penalty

P3-Late file penalty

P4-Late payment of tax penalty

**Accrued interest and statutory additions not included.

12. A delegate of the Secretary of the Treasury gave notice of the assessments described in paragraph 11, above, to Smith and made demand for payment to him. Despite notice and demand for payment, Smith has neglected or refused to fully pay those assessments. Smith is indebted to the United States in the amount of \$322,249.44 as of August 18, 2020, plus further interest and statutory additions according to law.

**COUNT II – DECLARATORY JUDGMENT ON NOMINEE AND
ON VALIDITY AND EXTENT OF FEDERAL TAX LIENS**

13. The United States incorporates by reference the allegations contained in paragraphs 1 through 12 as if fully and separately restated herein.

14. Federal tax liens arose on the dates of assessment detailed in paragraph 11, above, and attached to all of Smith’s property and rights to property, including property and rights to property held by a nominee.

15. On or about July 29, 2019, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien (“NFTL”) with Lauderdale County Clerk of Courts against Roger L. Smith for his unpaid federal income tax liabilities for the 2010 tax year.

16. On or about August 15, 2019, a delegate of the Secretary of the Treasury recorded a NFTL with Lauderdale County Clerk of Courts against Roger L. Smith for his unpaid federal income tax liabilities for the 2007 tax year.

17. The Temple Theater for the Performing Arts is the nominee of Smith and holds title to the Subject Property as a nominee, as illustrated by the following facts:

- a. Smith purchased the Subject Property on February 2, 2009.
- b. Smith transferred the Subject Property to the Temple Theater for the Performing Arts, a non-profit organization which he manages and is the registered agent for, on or about March 10, 2020, for inadequate consideration (\$10).
- c. The transfer of the Subject Property was in anticipation of a suit or occurrence. Smith owed federal income tax liabilities as early as April 15, 2008 (for the 2007 tax year). All of the NFTLs were filed against Smith in

2019, putting Smith on notice of his liabilities and a possible suit before he transferred the Subject Property in 2020.

- d. Despite having transferred the Subject Property to the Temple Theater for the Performing Arts, the Subject Property remains Smith's principal residence.
- e. Smith has enjoyment of the subject property: he currently resides at the Subject Property and he manages the Temple Theater for Performing Arts.

18. The federal tax liens against Smith are valid and may be enforced against all of Smith's property, including the Subject Property which is held by the Temple Theater for the Performing Arts as Smith's nominee.

WHEREFORE, the United States of America respectfully requests that the Court:

- A. Enter judgment in favor of the United States and against Roger L. Smith, for his unpaid federal income tax liabilities for the 2007, 2010, and 2018 tax years in the amount of \$322,249.44 as of August 18, 2020, plus interest and statutory additions as allowed by law and minus any payments or credits as allowed by law including a 10% surcharge as permitted by 28 U.S.C. § 3011;
- B. Decree that the federal tax liens of the United States attach to all property and property rights of Roger L. Smith, including the Subject Property held by the Temple Theater for the Performing Arts as his nominee and/or all property of by the Temple Theater for the Performing Arts as his nominee.
- C. Alternatively, adjudge that the Temple Theater for Performing Arts holds the Subject Property as Roger L. Smith's nominee and that Roger L. Smith's unpaid tax liabilities are enforceable against the Subject Property to the extent of the liabilities evidenced on the Notices of Federal Tax Lien; and

D. Award the United States its costs incurred in connection with this action, along with such other relief as justice requires.

Dated: August 13, 2020

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General
Tax Division

By: /s/ Genesis Martinez
Genesis Martinez
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Southern District of Mississippi

CIVIL COVER SHEET

3:20-cv-535-DPJ-FKB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Genesis Martinez, U.S. Dept. of Justice, Tax Division, 555 4th St NW
Room 6240, Washington, D.C. 20001 (202) 514-5915**DEFENDANTS**

Roger L. Smith and Temple Theater for the Performing Arts

County of Residence of First Listed Defendant **Lauderdale**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. Section 7401

Brief description of cause:

Suit to reduce federal tax assessments to judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
322,249.44

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/17/2020

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____